

**LEGAL PRESENCE PANEL
SUMMARY NOTES FOR MEETING OF 18 JUNE 2003**

NEXT MEETING

Wednesday, **July 2, 2003** from 10:00 a.m. to 4:00 p.m. in the Executive Conference Room, DMV Headquarters, 2300 West Broad Street, Richmond, Va. If you are unable to attend, please contact Vivian Cheatham at (804) 367-6606 or via e-mail at dmvvr@dmv.state.va.us.

TASKS & INFORMATION NEEDED FOR THE NEXT MEETING

- ▶ Review, discussion and recommendation on new action/issue statements presented to panel — panel members.
- ▶ Review, discussion and recommendation on re-submitted action/issue statements revised according to panel stipulations — panel members.
- ▶ Revised press release on (will be e-mailed to members for comments before next meeting) — Anne Atkins
- ▶ Soliciting Public Comments: Statistics and costs for toll free telephone — Karen Chappell. Web information and e-mail address — Anne Atkins. Review of VDOT process for public forums — Barbara Klotz. Feasibility and staffing for individual responses to comments made via e-mail, telephone, in-person and written comments — Anne Atkins.
- ▶ Review (1) draft comparison of proof of legal presence documents, and (2) constituency group invitees for additions — panel members.
- ▶ Comprehensive plan for public outreach effort, to include list of contacts and dates and locations — Philip Vasquez.
- ▶ Presentation on documents that can be used to prove legal presence (including such items as Presidential proclamations) used in other states, and a draft list of DMV's recommended documents — Jo Anne Maxwell.
- ▶ Recommendations for translating comments received in languages other than English — Anne Atkins.

SUMMARY OF RECOMMENDATIONS MADE

On Action/Issue Statements

- ▶ PRO-1: Initial steps for communication of legal presence information — Approved with changes to press release.
- ▶ PRO-2: Soliciting input on legal presence — Postponed/tabled for more information.
- ▶ PRO-3: Creating a DMV website for legal presence information — Approved.
- ▶ POL-1: Implementation of SAVE program — Approved with changes.
- ▶ POL-2: Designated offices/windows for legal presence transactions — Approved with changes.
- ▶ POL-4: Designation of temporary documents tied to legal presence — Narrowly approved with changes.
- ▶ POL-5: Over-the-counter vs. central issue of documents — Approved.

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SUMMARY OF RECOMMENDATIONS MADE

- POL-6: Fees for temporary documents issued — Hold/Carry Over.
- POL-7: Notification from law enforcement — Approved with changes.
- POL-8: Minimum period of document validity — Approved.
- POL-11: Regulations to implement HB 1954 & SB 1058 — Approved.

Revisions to 6/13 Meeting Minutes: See attached (revisions on pages 4 and 7 of 6/13/03 minutes).

SUMMARY OF DISCUSSIONS

- **Panel's Statement of Purpose Adopted:** The panel adopted the statement of purpose developed in the 6/13 meeting as follows:

To make recommendations on policy issues affecting implementation of HB 1954 and SB 1058 to ensure compliance with the law while best accommodating the needs and interests of DMV's customers in a manner that is fair, equitable, minimizes hardships to customers and is cost effective for the Commonwealth of Virginia.

- **Panel's Decision-Making Process (based on statutory and regulatory review):**

The panel is not a Governor-appointed panel nor is it a governing body. Therefore it can determine what constitutes a quorum; it cannot conduct electronic meetings. The meetings will be open to the public and all materials and communications related to the panel and its meetings come under the provision of the Freedom of Information Act (FOIA).

The quorum is defined as 50% of the members; but at least 5 appointed members must be present to make a decision. Decisions will be made by consensus; a vote will be taken only when consensus cannot be reached. When a vote is taken, substitutes for members may not vote; the chairman votes only to break a tie.

The panel will make recommendations to be sent to the Secretary's and Governor's Offices.

- **PRO-1: Initial steps for communication of legal presence information — Approved with changes to press release.**

Members in general agreed with the steps proposed to begin the communication effort. It was requested that the information be shared with the Department of Corrections and related agencies so that this information can be made available to released and paroled inmates who will come under the provisions of the Sexual Offender Registry. In addition, members requested changes to the draft press release to reflect that this legislation will affect all first time applicants and those whose licenses have been suspended, revoked or cancelled, and that the panel will solicit comments and make recommendations, not make decisions.

The revised draft will be e-mailed to members for comments. It will further be submitted for approval to the Secretary's Office and the Governor's press office, following the usual process.

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► **PRO-2: Soliciting input on legal presence — Postponed/tabled for more information.**

The members have requested that additional solicitation methods be included in this plan. Specifically, they wish to have a toll-free telephone number for those who have no access to the web, or for those who find it difficult to communicate in writing. In addition, it was noted that this was an area in which public forums could serve to solicit comments and feedback from the public. It was suggested that VDOT's process for soliciting public comments could be a helpful model. There was also a sense that personalized responses, in the form of a letter, were more desirable than generic computer-generated responses.

DMV staff will provide statistics and costs on installation of a toll-free telephone, and also on the feasibility and staffing for personalized responses. DMV staff will also provide information on links between the DMV website and the legal presence comments web page.

► **PRO-3: Creating a DMV website for legal presence information — Approved.**

Members requested that the web address be included in any materials and asked DMV to consider a Spanish version of the legal presence web page. Members agreed that there needs to be some method established for translating non-English comments whether received in oral or written form.

► **POL-1: Implementation of SAVE program — Approved with changes.**

Members expressed reservations about the reliability of the SAVE program and the timeliness of updates to the system. Philip Vasquez relayed that John Hager (Assistant to the Governor for Commonwealth Preparedness) has stated that he believes the U.S. Bureau of Citizenship and Immigration Services (BCIS) will become more efficient but that at this time, the SAVE system is not reliable. Mr. Hager indicated, however, that this statement was made over six months ago and that improvements may have been made to the system during that time. He stated that he does not know where it stands now. Members also noted that there was little information available on costs of using this system, and that costs would be necessary information for making a decision. Members requested that panel concerns about the reliability of the SAVE system be added to this action/issue statement. They also requested that the recommended decision be revised as follows:

DMV recommends forgoing ~~implementation~~ use of the SAVE program at this time given that it is not proven reliable, at least until HB 1954 and SB 1058 have been implemented. ~~This will assure that sufficient funds and manhours are available to successfully implement the legislation.~~ Once the legislation is enacted and staff has been trained, and the system has been proven reliable, then DMV would revisit the issue of SAVE implementation.

► **POL-2: Designated offices/windows for legal presence transactions — Approved with changes.**

Members discussed whether use of the DMV customer service center (CSC) queuing system and the concomitant training of selected CSC employees would have the effect of singling out certain customers or creating long lines and wait times for those who must prove legal presence as part of the licensing process. Concerns were expressed that the process could be used, intentionally

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or unintentionally, to discriminate against some customers. Members also discussed the costs of training all DMV CSC employees versus training specific employees to staff windows where legal

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presence transactions could be processed. Tentative plans are for DMV to hire ~~26~~ 21 additional employees to help handle the workload expected as a result of implementation. Panel members discussed the pros and cons of training all employees vs. specified employees. There were concerns that unless an employee handled legal presence transactions often, knowledge would erode. On the other hand, employees who handled these transactions frequently could maintain the specialized knowledge.

It was explained that currently, CSC queuing allows DMV to efficiently and effectively manage traffic in its facilities to minimize customer wait times. This applies equally in large and small CSCs. DMV currently employs document verifiers for proof of identification and residency and anticipates a similar process for legal presence. The queuing system is transparent to customers – no one is seen as singled out. The customer is directed to the window where his or her transaction can be handled most efficiently. Larger offices and offices in locations with large first-time populations will be staffed appropriately. In addition, CSC managers and assistant managers will be trained to keep the queues moving and make sure the legal presence verification process moves swiftly. DMV is determined to implement this process so that it is fair and nondiscriminatory to all its customers. Finally, it was pointed out that the legal presence process will have an impact on the large population of drivers whose licenses have been revoked, suspended or cancelled. Current DMV statistics show that over 1 million orders of suspension were issued in calendar year 2002, and over 475,000 reinstatements were processed

in the same year. All reinstatements will require proof of legal presence before the driver's license can be issued.

After the discussion, members requested that the recommended decision section of this action/issue statement be revised as follows:

DMV recommends that all DMV CSCs process transactions that require proof of legal presence. The agency recommends using its electronic queuing system to identify and direct all customers with transactions requiring proof of legal presence under HB 1954 and SB 1058 to windows staffed by employees trained in evaluating documents and conducting legal presence transactions. Thus, customers can conduct legal presence transactions in any CSC; however, DMV will not have to train every front counter employee to conduct these complex transactions.

► **POL-4: Designation of temporary documents tied to legal presence — Narrowly approved with changes.**

This action/issue statement caused deep concern among panel members. Members are concerned about any terminology or indication on the face of the driver's license that could be used to single out certain individuals or cause discriminatory treatment. DMV is concerned that while the legislation requires that any temporary license clearly indicate that it is temporary and also state the date that it expires, this could cause the license holder problems in other states. In other states, the term "temporary" is used, for instance, when an applicant has not fully complied with all licensing requirements. Some panel members expressed deep reservations about any such terminology, fearing that it would become a scarlet letter and cause outrage in

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immigrant communities. Members discussed several alternative terms, all of which posed problems (for instance, "temporary resident" would not work, since the holder may not be a resident, and that term is used under different circumstances by the INS).

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At the same time, some panel members expressed the view that Homeland Security measures would seem to indicate the need to clearly identify persons who are permanent residents vs. visitors. Other panel members expressed opposition to any unique license designation that could be considered pejorative or could be used to identify specific persons or groups of persons. One panel member made a motion to table this recommendation and seek guidance from the Governor's Office; the motion was defeated by a vote of 4 to 3.

The panel was evenly split (3 to 3) over approving this action/issue statement. The chairman cast the tie-breaking vote. The panel recommendation is that DMV develop some additional options to define this type of license document (i.e., "limited duration" or other such term), and that this action/issue statement be forwarded for review/approval. In addition, the information on this type of document should be sent to both the Governor's Chief Counsel and the Attorney General's Office for guidance on a proper designation for this type of license.

► **POL-5: Over-the-counter vs. central issue of documents — Approved.**

The panel approved the recommendation with very little discussion. Information was presented that many states are moving toward central issue of licenses, but these states issue an interim temporary license that the customer uses until the permanent license is mailed to him or her. At some future date, DMV may want to re-visit this issue.

► **POL-6: Fees for temporary documents issued — Hold/Carry Over.**

After some discussion, it was decided to hold this action/issue statement for the next meeting. This issue may possibly require changes to the Va. Code.

► **POL-7: Notification from law enforcement — Approved with changes.**

Members discussed whether information received from local law enforcement was sufficient grounds for requiring a licensed customer to provide proof of legal presence. Members were concerned that DMV act only on "safe" or legitimate information, and avoid appearing to blacklist certain customers. Members also expressed concerns about recommending that law enforcement notifications contain "substantial" personal information about the customer. It was determined that all notifications must be made on original letterhead stationary, and must include the name of a person to be contacted with contact information (telephone number, etc.). Further, all such information must be backed up and confirmed by the U.S. Bureau of Citizenship and Immigration Services, in writing, as DMV recommends.

Members requested the following changes in the wording of the second and third paragraphs of the recommendation section of this action/issue statement:

Notifications must contain ~~substantial~~ sufficient personal information about the individual (e.g., full name, SSN, customer number, address, date of birth), such that the individual's DMV customer record is easily identifiable.

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All notifications advising DMV that an individual is not lawfully present in the U.S. will be verified with the Bureau of Citizenship and Immigration Services before DMV takes any action.

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► **POL-8: Minimum period of document validity — Approved.**

Members approved this action/issue statement with little discussion. DMV recommends using the expiration date of the document used to prove legal presence as the expiration date of the license issued.

► **POL-11: Regulations to implement HB 1954 & SB 1058 — Approved.**

Members briefly discussed the process that would have to be followed under the regulatory process. There were concerns that even with the emergency provision of the APA, it would be difficult and time-consuming to update the list of approved documents for proving legal presence in a timely manner. The administrative process recommended by DMV would allow additional flexibility, in that as new documents are identified, and their reliability is established, they can be added to the list of acceptable documents immediately. Additionally, if documents listed as acceptable are determined to be unreliable, or are discovered to be subject to abuse or are found to be a security risk, they can be removed from the list immediately. Members agreed to send this action/issue statement forward with the understanding that the list of acceptable documents would be addressed separately.

► **Separate public forums vs. public comments periods within panel meetings.**

Members spent much time discussing whether to establish a period of time within the panel meetings for public comment. Members considered several other options, including setting up separate public forums, the public outreach process being set up by DMV, and informal information-gathering sessions. Some members expressed concerns that having a large number of people attend to make comments could lessen the amount of time remaining for panel business; others felt that the public has a right to attend any of the panel meetings and provide comments. Additional discussion centered on the outreach effort being developed by Philip Vasquez.

There was general agreement that allocating a block of time for public comment could necessitate meeting for a longer period of time; the schedules of members already place time constraints on availability of meeting times. Options that were considered were: having a Saturday meeting in one of the larger DMV CSCs in Northern Virginia, informal meetings with smaller groups, and separate outreach efforts, sessions to be held across the state. Members agreed that public comment is needed, and the panel needs a way to get direct contact and information. However, concerns were also expressed that public forums could possibly raise expectations that the law would not be enacted.

One member formally called for a public comment period at the beginning of every subsequent panel meeting. Since the members could not reach consensus on the motion, it was voted upon. The chairman broke the tie vote by voting against the measure, but voiced the commitment that Philip Vasquez would present the public outreach plan during the next meeting. It was agreed that this issue would be revisited in the next panel meeting, with the

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goal to resolve how to ensure public involvement in this implementation effort. If the panel is not satisfied with the public outreach plan, it will again vote on the measure to establish public comment periods at the beginning of panel meetings.

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► **Comparison of legal presence documents and list of possible constituency group invitees.**

Philip Vasquez distributed copies of a list of immigration and other such documents as they are accepted by the American Association of Motor Vehicle Administrators (AAMVA), the state of California and the state of Florida. Members agreed to review this list and contact Philip with comments.

He also distributed a list of constituency groups that could possibly be invited to public outreach forums. Members agreed to review this list and contact Philip with comments and additional groups as applicable. Philip may be reached at (804) 367- 6604, or via e-mail at dmvpdv@dmv.state.va.us.

Members also requested that DMV develop a list of that are used in other states to prove legal presence, and a list of documents that DMV would recommend for use in Virginia.

The meeting was adjourned at 4:10 p.m.

ATTENDEES

Panel Attendees: D. B. Smit, Rob Martinez, Helen Konrad, Walter Tejada, David Neumeyer, Steven Chumley (representing Robert Crouch), Ricardo Castaneda, and Ralph Davis.

Others in Attendance: Richard B. Campbell and Richard L. Walton, Jr. (Virginia Office of the Attorney General); Claire Guthrie Castañaga (CG2 Consulting); Barbara Klotz, Philip Vasquez, Karen Grim, Karen Chappell, Anne Atkins (Department of Motor Vehicles).

Notetaker: Michie Longley